

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

BRUCE STABLEY)	
)	
Plaintiff,)	
)	
v.)	C.A. CPU 4-08-001359
)	
HOMESTEAD GENERAL)	
CONTRACTING, INC.)	
And DAVID CARR,)	
)	
Defendants)	

Submitted: September 10, 2010
Decided: October 11, 2010

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DECISION AFTER TRIAL

Plaintiff, Bruce Stabley (herein Plaintiff or Stabley), filed a claim against Defendants, Homestead General Contracting, Inc., and David Carr (herein Defendant or Homestead or Carr), for alleged breach of a construction contract and sought damages of \$31,000. Plaintiff alleged a failure to complete the contract, failure to perform work in a workmanlike manner, and a breach of the covenant of good faith and fair dealing.

Homestead denied the claim and asserted a counterclaim against Stabley for \$8,500. Carr, the Chief Officer of the corporation Homestead, denied any personal responsibility for any damages.

At the conclusion of Plaintiff's case, a motion for directed verdict as to Carr's claim for no personal liability in this case was granted.

Pertinent Facts

The Court finds the following pertinent facts:

Stabley decided to add a four car garage and a master bedroom suite to his existing home in 2008. He retained Ben Kisielewski, a building designer, who had done work for him previously, to prepare design plans for the project. (PX1).

Stabley was referred to Homestead by Carr's brother, Don Carr. Stabley presented the design plans to Homestead and an estimate and contract was prepared by Homestead. (PX3). The contract called for payment of \$21,000. in stages. The time of payment is not spelled out precisely. The contract was couched in broad, general terms and did not specify in any detail what was to be done by Homestead and what was to be done by Stabley.

Although Homestead worked from the design plans it was clear that Homestead was not responsible for all the work included in the plans. The plans do not delineate in any specific way each parties' responsibilities. Under the contract, Stabley was to provide materials and was to do "interior" work. Homestead was to do the "exterior" work.

No executed copy of the contract was submitted to the Court, but both parties agree that the paper submitted may have been signed and they were bound by the terms.

No change orders or written modifications were made to the contract.

No memos or marks were added to the design plans to show what part of any work shown on the plans was to be performed by which party.

Stabley was to purchase all materials for the project (but the full scope or list of materials needed was not specified), and obtain any required permits and cover any disposal fees.

Homestead began work on the project in July, 2008. The project was to be completed within 15 weeks according to Carr. Homestead was on the job until late August and left the site after disagreement with Stabley as to the work completed and payment. Stabley paid Homestead \$10,000. at the beginning of the project and an added \$5,000. in August.

Kisielewski, who drew the design plans, visited the job site several times and was satisfied generally with the project. He did note the lack of certain materials for the roof. He also noted a problem in his design of the garage doors and made suggestions for correcting the problem which were followed. On his last visit to the site, which he could not date, he saw Stabley and members of his family working on the site.

After Homestead left the job site, Stabley had William Preston, a builder, review the project and had him prepare an estimate for completion and correction of alleged deficiencies and defects.

Added facts will be noted in the discussion and analysis.

Discussion and Analysis

A resolution of this dispute is hampered to a great extent by a lack of specific details for the responsibilities assumed – or to be assumed – by Stabley and Homestead. The parties were content to go on with the general “inside” and “outside” description of work and must now abide by their lack of something more precise as to what each was to perform.

Stabley was to supply all materials. Yet, Plaintiff's witness, Kisielewski, noted that some hurricane clips necessary for completion of the garage roof, were not supplied in a timely manner. Stabley failed to supply the truss design specifications for the garage roof.

A problem developed with the front doors of the garage. Kisielewski agreed that this was a design flaw on his part. He suggested a method to correct the defect and it appears that Homestead performed the necessary correction.

Stabley's brother assisted Homestead in some concrete work. Stabley's expert had issues with the work but this apparently was not Homestead's doing.

But all the issues did not rest with Plaintiff. Carr testified that indeed some of the work which was fairly the defendant's responsibility under the equivocal contract was not completed.

It is uncontroverted that Homestead left the job site in late August although Carr suggested it was in September and that Homestead did work into September. It is also clear that Homestead did not return to complete all the work. Carr, as the responsible person for Homestead, does not appear to have made a good faith effort to resolve the impasse with Stabley. Homestead may have had reason to stop work for nonpayment, yet it is not so clear that this position was totally correct and there was reason for Stabley to demand more before added payment was made.

Thus, there was fault on both sides, even though both sides had some justification for positions they adopted.

Plaintiff's expert, Preston, who testified in support of the claimed damages, was not fully credible. His draconian conclusion that in essence the Homestead job was

totally deficient is at odds with testimony from Kisielewski who found most, if not all, of the work satisfactory. The estimate submitted by Preston appears to be an effort to obtain a job rather than an objective appraisal of this project. He admitted that the data in his estimate for much of the roof work deficiency was not supported by any clear data. Even Plaintiff allowed that including estimates for redoing the concrete work was not warranted.

Plaintiff's evidence on work provided by his brothers lacks substantive basis for definitive finding of damages. One brother allowed that he did not expect anything in return for his efforts.

Conclusion and Order

Both Plaintiff and Defendant failed to meet their contractual obligations. Reciting a longer litany of reasons where each failed to meet their responsibility would serve no useful purpose.

Plaintiff did not get all that he bargained for. But Plaintiff did not provide all that he was responsible for under the contract as read by both parties.

Defendant did not get all that it bargained for. But Defendant did not complete all the work and did not make a fair effort to resolve the impasse before it left the job nor was there evidence of a genuine effort to do this after it left the job site.

When the book is closed on this case, the Court concludes that Defendant cannot take anything for its counterclaim and Plaintiff cannot take all he demands. Plaintiff has the benefit of not paying the full contract price; he gains at least \$6,000. on this issue. (Contract price of \$21,000. less payments of \$15,000.) From the evidence presented, the Court concludes that an additional payment of \$5,000. to Plaintiff is warranted.

Judgment will be entered in favor of the Plaintiff in the amount of \$5,000. with prejudgment interest from November 1, 2008, and post judgment interest and costs. Judgment will also be entered in favor of Plaintiff on Defendant's counterclaim.

IT IS SO ORDERED.

Alfred Fraczkowski
Associate Judge¹

¹ Sitting by appointment pursuant to Del. Const., Art. IV, §38 and 29 Del. C. §5610.